

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
ABERDEEN DIVISION

CHADALE L HALL

PETITIONER

V.

CIVIL ACTION NO.1:12CV125-MPM-DAS

WINSTON COUNTY SHERIFF'S DEPARTMENT

RESPONDENT

REPORT AND RECOMMENDATION

The respondent has moved to dismiss the habeas corpus petition. The petitioner has not responded in opposition.

Chadale Hall was arrested by the Winston County Sheriff's Department for the murder of Marcus Henton on February 26, 2012. On May 29, 2012, this court received and filed Hall's habeas petition. On the same day the Circuit Court of Winston County dismissed the murder charge without prejudice due to insufficient credible evidence. The respondent requests that this action be dismissed as Hall is no longer in custody as required by 28 U.S.C. § 2254 (a). Because the writ is available only where a person "is in custody in violation of the Constitution or laws or treaties of the United States," *Maleng v. Cook*, 490 U.S. 488, 490 (1989) and Hall does not meet the "in custody" requirement for issuance of the writ and this court therefore lacks subject matter jurisdiction. This action should be dismissed.

The parties are referred to 28 U.S.C. § 636(b)(1) and Local Rule 72(a)(3) for the appropriate procedure in the event any party desires to file objections to these findings and recommendations. Objections must be in writing and must be filed within fourteen days of this date. Failure to timely file objections to the proposed findings and recommendations will bar an aggrieved party from challenging on appeal both the proposed factual findings and the proposed

legal conclusions that are accepted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

Petitioner is directed to acknowledge receipt of this report and recommendation by signing the enclosed acknowledgment form and returning it to the court within fourteen days of this date. Petitioner is warned that failure to comply with the requirements of this paragraph may lead to the dismissal of this lawsuit under F.R.Civ.P. 41(b) for failure to prosecute and for failure to comply with an order of the court.

SO ORDERED this the 8<sup>th</sup> day of June, 2013.

/s/ David A. Sanders  
UNITED STATES MAGISTRATE JUDGE